

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 12/19/2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KENNETH H. WOODSON,

Plaintiff,

-against-

ONLYFANS,

Defendant.

1:24-cv-01588-MKV

ORDER

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff appeared before the Court on December 19, 2024 pursuant to an order scheduling a hearing on his motion for default. [ECF No. 23]. The order directed Plaintiff to serve his motion for default and the order itself on Defendant and file proof of such service on ECF. [ECF No. 23]. No such proof of service was filed on the docket and Defendant did not appear at the hearing. At the hearing, Plaintiff explained that he believed he served Defendant with notice of this hearing via the OnlyFans website. As explained at the conference, that is legally insufficient service.

Plaintiff stated at the hearing that his complaint asserts a breach of contract claim. As explained at the conference, Plaintiff must allege each of the elements of a breach of contract claim in his complaint. Under New York law, there are four elements to a breach of contract claim: “(1) the existence of an agreement, (2) adequate performance of the contract by the plaintiff, (3) breach of contract by the defendant, and (4) damages.” *Harsco Corp. v. Segui*, 91 F.3d 337, 348 (2d Cir.1996). Plaintiff also must allege facts sufficient to substantiate the amount of damages that he is claiming.

Accordingly, Plaintiff’s motion for default judgment is HEREBY DENIED without prejudice to renewal.

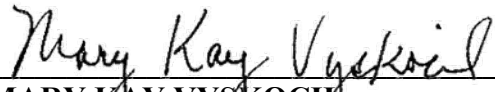
IT IS FURTHER ORDERED that Plaintiff is HEREBY GRANTED leave to file an amended complaint.

Plaintiff remains on notice that failure to comply with court orders, the Court's Individual Rules, the Local Rules, and the Federal Rules of Civil Procedure may result in sanctions, including dismissal of this action for failure to prosecute.

The Clerk of Court is respectfully requested to mail a copy of this Order to the pro se Plaintiff at the address of record.

SO ORDERED.

Date: December 19, 2024
New York, NY


MARY KAY VYSKOCIL
United States District Judge